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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,669	04/21/2004	Richard F. Gladney	SMCY-P03-085	7742
7590	03/06/2006		EXAMINER	
ROPS & GRAY LLP EDWARD J. KELLY ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			SANTOS, ROBERT G	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/829,669	GLADNEY, RICHARD F.
	Examiner Robert G. Santos	Art Unit 3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 September 2005 & on 19 December 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 and 3-18 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1 and 3-18 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09082005</u> . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 6-14, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of G.B. Pat. No. 2172198 to Poole. As concerns claims 1 and 7-14, Broyles '729 lacks the use of a mattress foundation (C) having at least one sidewall outer surface (2-5) including three dimensional architectural features formed or molded therein, wherein the architectural features mimic a pattern and tactile feel substantially comparable to a quilted surface of a companion mattress, wherein the plastic side wall includes a panel interfitted onto the outer surface thereof and an outer surface of the panel includes the three dimensional features molded therein, as well as the use of at least one ground support member (f) which also includes a pattern. Poole '198 provides the basic teaching of a plurality of frame units (10, 20, 30, 40) each including a panel (54, 56, 59) attached thereto, wherein the panels are formed from "coloured plastic or wood" and "may have *relief* motifs" (as described in page 2, lines 6-9). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress assembly of Broyles '729 with a mattress foundation comprising at least one sidewall outer surface each including three dimensional architectural features formed or molded therein, wherein the architectural features mimic a pattern and tactile feel substantially comparable to a

quilted surface of a companion mattress, wherein the plastic side wall includes a panel interfitted onto the outer surface thereof and an outer surface of the panel includes the three dimensional features molded therein, and at least one ground support member which also includes a pattern in order to impart a finished appearance to the mattress assembly as desired.

With regards to claims 6, 17 and 18, Broyles '729 is considered to show conditions wherein a pattern (12) is formed on at least a portion of the upper side of the top surface (1) of the mattress foundation (C) and wherein an outer periphery portion of the top surface is substantially devoid of substantially any three dimensional features in Figure 1 and in column 2, lines 58-62.

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Poole '198, and further in view of Saputo '946. Broyles '729, as modified by Poole '198, does not specifically disclose the use of a headboard tangentially extending vertically along one end of the foundation. Saputo '946 provides the basic teaching of a plastic mattress foundation (10) provided with brackets (59, 60) for securing a headboard thereto. The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles '729, as modified by Poole '198, with a headboard tangentially extending vertically along one end of the foundation in order to impart a more finished appearance thereto.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Poole '198 and further in view of Saputo '946 as applied to claim 3 above, and further in view of Bellows et al. '191. Broyles '729, as modified by Poole '198 and as further modified by

Saputo '946, does not specifically disclose a condition wherein the headboard is constructed substantially of plastic material. Bellows et al. '191 provide the basic teaching of a plastic bed frame (10) including a headboard (16) and constructed from a plastic material (see Bellows et al. '191, column 3, lines 37-39). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles '729, as modified by Poole '198 and as further modified by Saputo '946, with a headboard constructed substantially of plastic material since such a headboard is generally well known as being economical and lightweight as taught by Bellows et al. '191, thereby also facilitating attachment to a mattress foundation.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Poole '198 and further in view of Saputo '946 and Bellows et al. '191 as applied to claim 4 above, and further in view of Wallace et al. '537. Broyles '729, as modified by Poole '198 and as further modified by Saputo '946 and Bellows et al. '191, does not specifically disclose a condition wherein an outer surface of the headboard includes a pattern. Wallace et al. '537 provide the basic teaching of a headboard (12) provided with a pattern (21) on its outer surface (18). The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles '729, as modified by Poole '198 and as further modified by Saputo '946 and Bellows et al. '191, with a headboard having an outer surface including a pattern in order to "enhance the attractiveness and beauty of the structure" as desired (see Wallace et al. '537, column 1, lines 3-9).

6. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broyles '729 in view of Poole '198, and further in view of U.S. Pat. No. 1,866,953 to Stephens. Broyles '729, as modified by Poole '198, does not specifically disclose the use of an aperture for a drawer and a drawer slidably interfitted within the aperture. Stephens '953 provides the basic teaching of a mattress foundation assembly comprising an aperture (11) for a drawer and a drawer (12) slidably interfitted within the aperture. The skilled artisan would have found it obvious at the time the invention was made to provide the mattress foundation of Broyles '729, as modified by Poole '198, with an aperture for a drawer and a drawer slidably interfitted within the aperture in order to provide a convenient storage space for items as desired.

Response to Amendment

In response to Applicant's arguments on pages 6 and 7 of his amendment that there is no suggestion to combine the Broyles '729 and Poole '198 references, the examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545, (CCPA 1969). In this case, although the motivations to make the modifications which were stated in the Office action were not expressly articulated within the

references, one of ordinary skill in the art of bed support structures would have still found it obvious at the time the invention was made to combine the references simply due to the advantageous effects (i.e., an enhanced and finished appearance) achieved by combining the structural elements inherent to the devices disclosed in the references. Thus it is believed that the examiner has provided a *prima facie* case of obviousness absent the use of impermissible hindsight.

Moreover, with regards to Applicant's arguments on page 6 of his amendment that Broyles '729 suggests that the sidewalls include certain structural features that accommodate infolded portions of bedclothing, the examiner respectfully disagrees. As described in column 2, lines 40-42 & 69-72 and as shown in Figure 2 of Broyles '729, it is recess 6 formed in the upper surface of the top wall 1 of the foundation C of Broyles which is formed to receive infolded portions of sheets 13-15.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sheehy '822, Polevoy et al. '858 and Hooper, Jr. '199.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert G. Santos whose telephone number is (571) 272-7048. The examiner can normally be reached on Tues-Fr and first Mondays, 10:30 a.m. to 8:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia L. Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert G. Santos
Primary Examiner
Art Unit 3673

R.S.
March 4, 2006